

### **REMARKS**

Upon entry of this Amendment, claims 2-23 are pending in the application.  
Original claims 1-23 stand rejected.

Claim 1 is canceled herein, and claim 8 rewritten in independent form to incorporate the subject matter of claim 1. This places claim 8 in independent form without narrowing the original scope of the claim. Claims 2-7, 9-10, 12-13, 15 and 23 are amended herein to depend from claim 8 and those depending on it.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 19-22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 19-22 have therefore been amended to depend from claim 15 to provide proper antecedent basis for the term "emulsion." Therefore, Applicants respectfully request withdrawal of this rejection.

### **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-23 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Kupper (4,705,691) or Hasegawa (JP 3452713) in view of Ikawa (1977-24535) and Merkt (2002/0034575). Applicants respectfully submit that this rejection is traversed in light of the following amendments. Because claim 1 has been canceled, and the subject matter incorporated into original claim 8, Applicants respectfully submit that the rejection with respect to claim 8 and those that depend from it is overcome

MPEP sec. 2142 states that to establish a prima facie case of obviousness, three criteria must be met:

- 1) "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings";
- 2) "there must be a reasonable expectation of success"; and
- 3) "the prior art reference (or references when combined) must teach or suggest all the claim limitations".

Applicants respectfully submit that the claimed invention of claim 8, as amended, is patentably distinct from the references cited in the Office Action because they fail to disclose a solid sucrose acetate isobutyrate ("SAIB") formulation as claimed in amended claim 8. As amended, claim 8 recites the following:

A formulation comprising:

sucrose acetate isobutyrate in an amount from about 1 weight percent to about 80 weight percent based on the weight percent of the formulation; and

a substrate that is soluble in water or oil, wherein the substrate is present in an amount from about 30 weight percent to about 99 weight percent based on the weight percent of the formulation,

wherein the formulation is a solid and wherein the formulation is pourable in less than about 20 seconds according to ASTM method D1895-96, and

wherein the substrate is selected from the group consisting of sucrose, hydrophobically modified food starch, gum acacia, maltodextrins, cyclodextrins, microcrystalline cellulose, carboxymethyl cellulose, gum ghatti, modified gum ghatti, xanthan gum, tragacanth gum, guar gum, candellila wax, hydrocarbon wax and carnauba wax.

There is no suggestion or motivation in Kupper, Hasegawa, Ikawa or Merkt to arrive at the present invention. Therefore, Applicants respectfully submit that the patentable features of independent claim 8, as amended, are not made obvious by the cited references. Applicants respectfully further submit that claims 2-23 that depend from claim 8 are likewise patentably distinguishable over Kupper, Hasegawa, Ikawa and Merkt.


Moreover, it is respectfully submitted that there is nothing in the cited documents that would have motivated those of ordinary skill in the art to have combined the teachings of the cited art in any way that would have rendered the claimed invention obvious. Therefore, Applicants respectfully urge that the asserted rejections over the alleged combinations of Kupper, Hasegawa, Ikawa and Merkt are overcome. Based on the foregoing comments, the Applicants respectfully request that the rejection be withdrawn, and the claims allowed.

Application No. 10/713,937  
Amendment dated June 5, 2006  
Reply to Office action dated January 6, 2006

80048(US02)

Applicants respectfully request that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions, please contact the undersigned at (423)-229-8862.

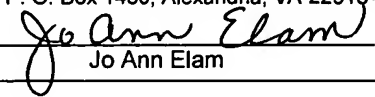
Respectfully submitted,

  
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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Mail Stop Amendment, P. O. Box 1450, Alexandria, VA 22313-1450.

  
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Jo Ann Elam

June 5, 2006  
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Date